



2023-2024 Stakeholder Working Group

FRAMING QUESTIONS

This document identifies proposed framing questions to be addressed by the 2023-2024 Comprehensive Water Review Stakeholder Working Group. Based on stakeholder feedback, framing questions remaining from the 2022 Stakeholder Working Groups are prioritized for 2023-2024 work and beyond. These framing questions are intended to provide a basis for the stakeholder working group to engage in a broad discussion, thoroughly analyze the issues and bring forth additional information, and collectively develop recommendations. Sub-working groups will be formed to intensively address each of the first three framing questions. The framing questions will be reviewed and finalized at the August meeting.

FRAMING QUESTION #1: FINAL DECREES AND ROLE OF THE JUDICIARY¹

1. Starting with the work product of the 2022 Transition Working Group (SB72):
 - a. What are the lessons learned from the 2023 Legislative Session?
 - b. What modifications are needed to the work product?
 - c. How to refine recommendation?
2. Do the policies associated with closed basins and final decrees need to be updated or changed?

FRAMING QUESTION #2: EXEMPT WELLS ²

1. How are exempt wells currently being used to meet new water needs? Why and how are people using permit exceptions?
2. Are there certain situations where exceptions should be expanded for other uses (e.g., minor POU changes)?
3. In what situations should the full permit process, a streamlined process, or exceptions be utilized or allowed?
 - a. In what situations is a full permitting process necessary?
 - b. When would a modified/streamlined permitting process be acceptable?
 - c. When is the use of an exception appropriate and reasonable?

FRAMING QUESTION #3: WATER MEASUREMENT³

1. How is water measurement, data, and analytics currently being used in water administration today?
2. Are changes in water measurement requirements needed to meet growing water needs and protecting existing uses?
3. Should water measurement requirements vary by permit type (e.g., exempt wells, mitigation, in new permits and changes)?

¹ Revised Framing Question from the 2022 Transition Working Group

² Framing Questions from the 2022 Changes, Mitigation and Exceptions Working Group

³ Framing Question and brought up by both 2022 Working Groups

FRAMING QUESTIONS ADDRESSED AFTER 2025

The framing questions below are proposed to be addressed after the 2025 Legislative Session. If the 2023-2024 Stakeholder Working Group has time to address these questions, they can be prioritized for work.

FRAMING QUESTION: WATER PLANNING AND GROWTH

1. What changes are needed to encourage development of new uses of water (e.g., subdivisions) to not use exemptions (e.g., controlled GW areas, stream depletion zones, county planning and coordination)?
2. What tools are available for new water development, growth, and security (e.g., expand service areas, perfected water rights, and groundwater reservations)?
3. What information is available to inform land use planning and accommodate growth while protecting existing water rights?

FRAMING QUESTION: MITIGATION AND MARKETING FOR MITIGATION FRAMEWORK

1. What are the existing tools in statute, rule, or policy for mitigation, mitigation banking, and marketing for mitigation (e.g., finding willing sellers, affordable mitigation)?
 - a. How do we create incentives and make existing tools more workable?
 - b. How do we provide flexibility in the timing & location of impact to allow for greater mitigation opportunities?
 - c. Is additional flexibility in storage rules or policy needed to allow for development and mitigation (high spring flows, aquifer recharge, aquifer recharge storage and recovery)?
 - d. Does the mitigation process need to be simplified?
2. What are the lessons learned from existing mitigation projects?
3. What additional statutes, regulations, and/or policies are needed to allow for innovations? What are other solutions beyond mitigation/marketing for mitigation would help meet future water needs?
4. Should the State consider a pilot approach to exploring potential mitigation options?
5. Should the change process for potential mitigation water have a more streamlined change process?
6. If and how does monitoring and reporting need to be included?

FRAMING QUESTION: WATER DISTRIBUTION AND DISPUTES

1. How should final decree and post-1973 appropriated water be distributed?
 - a. Are additional rules, statutes and authority needed to better manage and distribute water?
2. What is the role of water commissioners? Should every basin have a water commissioner?
3. Who is responsible for water commissioner management and supervision?
 - a. To whom should water commissioners report (District Court/Agency/Other)?
 - b. How should Water commissioners be hired, trained, and managed?
 - c. How are water commissioners represented in dissatisfied water user complaints?
4. Is the current structure to train, support, and fund water commissioners adequate?
5. What additional tools are needed to support water commissioners?
6. How are water commissioners' records maintained and standardized?
 - a. Should water records be standardized?
 - b. How should they be standardized?
 - c. Who should be responsible for maintaining water commissioners' records?
 - d. Should yearly water commissioners' records be maintained locally, centrally, or both?
 - e. Should records be digitized and added to individual water right records?

7. What is the relationship between water commissioners and the District Courts? Is there a need to improve consistency?

FRAMING QUESTION: WATER COMPLAINTS AND ENFORCEMENT

1. In what circumstances do stakeholders want water enforcement? Are there certain times of the year or locations where enforcement is more efficient and beneficial?
2. Are there additional statutory or administrative remedies needed to enforce water rights?
3. Are there additional judicial remedies needed to enforce water rights?
4. Are there sufficient mechanisms to allow water users to enforce against other water users for “illegal” water use?
5. What role, if any, should water measurement and reporting serve in enforcement?

QUESTIONS DISCUSSED BY 2022 WORKING GROUPS

FRAMING QUESTION: PERMIT AND CHANGE PROCESS (ADDRESSED IN HB 114-2023 LEGISLATIVE SESSION)

1. How can the water permit and change process have more clearly defined expectations (certainty and transparency) for applicants?
2. How can the water permit and change process be more accessible, understandable, and affordable (including costs of process and opportunity costs) for applicants? Working group describe what these terms mean.

FRAMING QUESTION: FINAL DECREES

1. What is the best way for adjudicated pre-1973 rights and new permits and changes (both as certificates of water rights) to be cohesively administered?
2. Are the current statutes and rules adequate to meet that vision?
 - a. Are the current statutory provisions for corrections of mistakes and errors in final decrees adequate?
 - b. What notification process should be used?

FRAMING QUESTION: ROLE OF THE JUDICIARY

1. Are there concerns with the current post-final decree system of judicial administration of water rights? If so:
 - a. Identify concern(s);
 - b. Identify the current statutory and regulatory frameworks and tools available to address those concern(s);
 - c. Identify any additional tools or resources needed to address those concern(s);
 - d. Identify potential statutory, regulatory, and policy solutions; and,
 - e. Evaluate pros and cons of potential solutions.
2. Additional considerations for any potential statutory, regulatory, and policy solutions developed (e.g., overlapping jurisdictions, appointment of judges)?